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Supreme Court of the United States

OCTOBER TERM, 1943.

CAFETERIA EMPLOYEES UNION, LOCAL 302, and WILLIAM MESEVICH, *Petitioners*,

AGAINST

GUS ANGELOS, *et al.*, *Respondents*.

No. 36.

CAFETERIA EMPLOYEES UNION, LOCAL 302, and WILLIAM MESEVICH, *Petitioners*,

AGAINST

ELIAS TSAKIRES, *et al.*, *Respondents*.

No. 37.

ON WRITS OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF NEW YORK.

RESPONDENTS' BRIEF.

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I.—Statement of the Case.

Each respondent operates a cafeteria in the Borough of the Bronx employing no outside help at all. Each respondent is a partnership, composed of the *quondam* employer and former employees. The partnership agreements are in writing, and are to be found at folios 256-282 of Case No. 36, and folios 226-249 of Case No. 37.

The petitioners picketed the two cafeterias, with men carrying placards with a legend that the respondents were

unfair to organized labor, and the pickets approached prospective customers and told them that the food in the cafeteria of respondent Angelos was bad, and that by patronizing said cafeteria, customers were aiding the cause of Fascism (fol. 38, Case No. 36 and Case No. 37). No strike had ever been called at either cafeteria (fol. 37, Case No. 36, fol. 37, Case No. 37).

The Supreme Court of the State of New York, Bronx County, granted injunctions against picketing, on the ground that there was no labor dispute, and on the ground that there were no employees in these cafeterias, all being partners, doing their own work.

The injunctions were affirmed by the Appellate Division of the Supreme Court, without opinion, and the Court of Appeals of the State of New York affirmed the Appellate Division, by a divided Court, said higher Court writing a prevailing opinion (Rippey, *J.*), and a dissenting opinion (Desmond, *J.*) (fols. 337-338, Case No. 36).

It is deemed pertinent at this point to cite from the prevailing opinion the quintessence of the rationale of the majority of the Court of Appeals,

> "The facts as found show that the defendants established a picket line at and near the cafeteria on or about April 15, 1939. On April 22, 1939, the plaintiffs in this action formed a partnership in accordance with the provisions of our Partnership statute (Partnership Law, Cons. Laws, ch. 39), and filed a certificate as required by law that it was conducting business at the place indicated. * * *
>
> Upon conflicting evidence it has been found as matters of fact, conclusively binding on this Court, that the plaintiffs were partners and, as such, sole owners and operators of the cafeteria, that the partnership was a valid partnership and that plaintiffs as members of the partnership did all the

work in connection with the cafeteria without any outside assistance. * * *

The mere fact that no strike has been called does not make the picketing unlawful, * * *. Nevertheless, there can be no labor dispute within the meaning of section 876-a unless there is employment (*Baillis* v. *Fuchs*, 283 N. Y. 133, 137). Upon the facts as found in this case, the partnership comes within the reasoning of and is controlled by the decision in *Thompson* v. *Bockhout* (273 N. Y. 390). The partnership was not a legal entity in the sense that its members were employees as in the case of a corporation (*Borough Park Sanitary Live Poultry Market, Inc.* v. *Heller*, 280 N. Y. 481). * * *

Accordingly, the action rests upon the principles of the common law without preliminary compliance with the provisions of 876-a of the Civil Practice Act required.

* * * But a citizen is not required to tolerate peaceful picketing accompanied by untruthful representations, interference with his business, * * * designed to injure or destroy his business whether a labor dispute exists or not (*Busch Jewelry Co.* v. *United Retail Employees' Union*, 281 N. Y. 150, * * *). Unlike the record in the *Wohl* case, there are findings of fact here to sustain the decree. * * *

By no authoritative decision has it been held that such conduct is not subject to judicial restraint. On the contrary, unlawful and coercive conduct will be enjoined where it has been found that such conduct has caused damage and will cause irreparable damage if permitted to continue and the party who is so damaged or threatened to be damaged has no adequate remedy at law. (*Busch Jewelry Co.* v. *United Retail Employees' Union*, *supra*, p. 156.)"

The petitioners would have it that, albeit there was no labor dispute, albeit the signs of the pickets were untruthful and misleading, they should none the less be permitted to picket and injure, and mayhap destroy, the businesses of the respondents, by dint of the constitutional guarantees of freedom of speech and freedom of assembly. The petitioners would have freedom of speech synonymous with freedom to injure and destroy by unfair means.

II.—Summary of Argument.

(a) The injunctions issued herein and affirmed by the Court of Appeals, are in comport with equitable principles, and under a local law of the State of New York.

(b) There is a local question involved under Section 876-a of the Civil Practice Act of the State of New York, as well as under Section 8 of Article 1 of the Constitution of the State of New York, pursuant to which the judgments of the State Court can and should be sustained.

(c) The injunctions issued herein in favor of the respondents do not violate the constitutional guarantees of "Freedom of Speech and Assembly".

III.—Argument.

(a) The injunctions issued by the Supreme Court and affirmed by the Court of Appeals, are in accordance with equity, and interpreted under a local law of the State of New York.

The Court of Appeals, being bound by the findings of fact of the Trial Court, as affirmed by the Appellate Division, interpreted 876-a of the Civil Practice Act of New York State, and found as a matter of law that these cases do not come under its provisions. This involved obviously but a local statute, with which this Court is not, as a rule, concerned, unless it is in conflict with the United States Constitution.

To bring these cases under the aegis of the federal constitution, the petitioners invoke freedom of speech and assembly. No one quarrels with that most democratic and salutary doctrine. However, can freedom of speech and assembly be twisted to mean freedom to assemble and speak in order to injure other citizens who are likewise entitled to the protection of the laws of the land? The rationale of freedom of speech never was intended to cover freedom to vilify and harm. Such a purpose must perforce lead to an absurd result, something Courts never countenance.

Under this so-called freedom of speech, the no-strike pledge elicited by our President from organized labor after the Pearl Harbor attack, was violated 222 times during July, 1942, according to statistics compiled by the National War Labor Board. There were 30 more strikes in July, 1942 than in June, 1942, leading to the loss of countless thousands of labor hours, and thus impeding production.

In the present cases, there never was involved the slightest dissatisfaction with conditions of labor, wages or hours, or with anything at all. This union took it upon itself, as a sort of tutelary guardian, to picket these cafeterias with misleading and inveracious signs and, in one instance at least, to state to the public that the food in the cafeteria was bad. Obviously the signs reading that the respondents are unfair to organized labor were untruthful, because no labor was employed in these cafeterias. In fact, the petitioner being a union of employees, would not even admit owners as members. What possible motive, save to harass and harm the petitioners, could the union have had for picketing in these cases? As was said by Hon. Peter P. Smith, Justice, in *Zweibon* v. *Goldberg, et al.* (20 N. Y. Supp. 2nd, 272, 273 [not officially reported]):

"The picketing which is being resorted to in this case must be restrained because the signs are untruthful, deceptive and misleading. The reading on the placards being carried by pickets, is as follows, 'Please do not patronize this place, carpets and linoleum being done by non-union labor'. The plain meaning sought to be conveyed to the public by the legends on the signs is that the plaintiff, in the conduct of his business, employs persons who are not members of any union of employees. The truth is, however, that plaintiff employs no one at all, he employs no labor, either non-union or union. He himself does all the work in connection with his business; he conducts a 'one man business'. Under such circumstances, there can be no 'labor dispute' as that term is commonly understood. Civil Practice Act, §876-a, subdivision 10(c). The obvious purpose of the picketing in which defendants are engaged is to create in the minds of the public the false impression that plaintiff is employing non-union labor. Such picketing is a libel upon plaintiff and where there is no labor dispute it must be enjoined. *Thompson* v. *Boekhout*, 273 N. Y. 390, 7 N. E. 2nd, 674; *Baillis, et al.* v. *Fuchs, etc.*, 2nd Dept. 258 App. Div. 919, 16 N. Y. Supp. 2nd 724."

As was said in *National Labor Relations Board* v. *Fansteel M. Corp.*, 306 U. S. 240, 59 S. Ct. 490, 497, 83 L. Ed. "There is not a line in the statute to warrant the conclusion that it is any part of the policies of the Act to encourage employees to resort to force and violence in defiance of the law of the land." Of course, force can be actual, or of the more insidious and dangerous kind, the subtle and venific force of false propaganda.

Under no theory can it be seen why a union should be allowed to picket a small business employing no one. No rights of labor are involved. No public policy demands it. No constitutional questions are involved. It can only serve to encourage the baser passions and prejudices.

To sum up, the New York Supreme Court, exercising its equitable jurisdiction and powers, restrained the petitioners herein from doing an unlawful act. The highest Court of the State of New York has affirmed those decisions. The petitioners have been forbidden to mislead the public by untruthful placards. Surely, the Courts have power to do this, and doing so, no legitimate freedom of speech is hampered, but only freedom to harm, injure and libel.

(b) There is only a local question involved, construing Section 876-a of the Civil Practice Act of New York State.

It is well settled that this Court will not review a State Court decision construing or interpreting a statute of its own State.

Neblett v. *Carpenter*, 305 U. S. 297.

It is pellucid from what has been shown thus far that the Supreme Court, as well as the Court of Appeals, merely construed a New York statute, Section 876-a of its Civil Practice Act. Surely this is a local matter. Surely other states may have other sections that might make picketing lawful under all circumstances or conditions. But that is a state and local matter. It is impossible to see how any Federal questions are involved of which this honorable Court should take cognizance.

Under the circumstances, the respondents urge that the decrees having been properly founded upon a local law, they should be in all respects affirmed.

(c) The injunctions herein are not violative of the constitutional guarantees of freedom of speech or assembly.

Nowhere, in the injunctions herein, are to be found prohibitions against distribution of hand bills, of publishing truthful advertisements. The Court merely enjoined picketing in front of the respondents' places of business by false placards. The attempt to spell out a violation herein of the constitutional guarantee of free speech is specious and disingenuous.

It is not gainsaid that honest labor disputes or efforts by labor unions to obtain better working conditions or greater membership is not a proper function of unions. Those are legitimate pursuits of labor unions.

A. F. of L. v. *Swing*, 312 U. S. 321.

But here no such situation exists. No workingman existed over whom the protective zeal of the union could hover. The legends were found to be untruthful. The purpose here was obviously not a legitimate object of a labor union. Here was a partnership. Whether it was indeed a partnership was a question of fact.

Fullam v. *Peterson*, 21 N. Y. Supp. 2nd, 797 (not officially reported).

That fact was decided in favor of the respondents. The Court of Appeals could not disturb such finding. What followed was a natural, logical and legal sequela.

The public, reading the placard of the petitioners, could be led to believe only one thing, to wit, that these respondents were unfair to labor. However, they were partners and employed no labor.

No one can doubt the right of a State Court to interpret and construe the meaning of a State statute so as to prevent the commission of unfair labor practices.

Hotel & Restaurant Employees Union v. *Wisconsin Employment Relations Board*, 315 U. S. 437, 440, 441.

Nor can one assume that our courts of equity have been divested of all power to enjoin an abuse of free speech. Improper uses of the rather broad coverage of the 14th Amendment should not be so insulated as to prohibit justifiable curbs, when it is found that there are actual or threatened abuses of those constitutional privileges. The Courts of the State of New York have long since recognized this principle and recognized the dangers of picketing via misleading and fraudulent legends. Appropriate relief in the form of civil and penal remedies have been afforded.

In fact in §8 of Article 1 of the Constitution of the State of New York we find

> "Every citizen may freely speak, write and publish his sentiments on all subjects, being responsible for the abuse of that right;"

obviously the New York State Constitution had in mind that freedom of speech should never be abused.

People v. *Jenkins*, 255 N. Y. 637;
People v. *Bellows*, 281 N. Y. 67;
Canepa v. *John Doe*, 277 N. Y. 52.

In contradistinction to the situation that prevailed in the case of *Bakery and Pastry Drivers' Union* v. *Wohl*, 315 U. S. 769, the petitioners here resorted to false and misleading placards, which was found as a fact by the trial court. It is respectfully submitted that such findings of fact, based on competent evidence should not be disturbed. The petitioner has not been denied free speech. It has

been curbed in its abuse of free speech. It has been forbidden to mislead the public and harm the respondents under the guise of free speech. We do not imagine that the petitioner contends that the Constitution of the United States authorizes it to deceive the public. Can it be heard to complain that it has been forbidden to disseminate false propaganda or untruthful literature? Surely the petitioner has no grievance of which this or any Court can take serious cognizance. The State Court applied the principle of *"Sic utere tuo ut alienum non laedas"*, and has safeguarded the property rights of the respondents, without depriving the petitioner of any right except that of injuring and deceiving. Unions protect workers and not owners. The respondents are owners and not workers, and the petitioner has no legitimate object in picketing such a business. Both legally, morally and factually, the injunction decrees herein were properly granted and properly affirmed by the Court of Appeals of New York State.

CONCLUSION.

The decrees under review do not contravene the constitutional guarantees of freedom of speech and assembly, or freedom of the press, and should therefore be affirmed.

Dated: New York, October, 1943.

Respectfully submitted,

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